

*James
Hunt
Pickrell*

December 29, 1954
Letter Opinion
No. 54-274-L

Mr. A. W. Yoder, Assistant Director
Arizona Game and Fish Commission
Arizona State Building
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Re: Payment of rent to State of Arizona by the
Arizona Game and Fish Commission

Dear Mr. Yoder:

This is in response to your request for an opinion regarding the following question:

"Will you please advise us if we can legally pay office rent to the State of Arizona from the Game and Fish Protection Fund.

The sum of \$6,000.00 was placed in our budget as passed by the legislature ear-marked for rent, but we would like the legality of it determined before we present it to the Commission for their action."

The appropriation referred to in your question is in Section 10-939, A.C.A. 1939, as amended in 1954, subdivision 78, wherein it is provided:

"Subdivision 78. ARIZONA GAME AND FISH COMMISSION
From the Arizona Game and Fish Protection Fund
the following is appropriated:

* * * * *
Rent--Payable to the State of Arizona----- 6,000.00"
* * * * *

In order to properly answer the question you have asked, it will, of course, be necessary to examine the nature of the Game and Fish Protection Fund referred to in the appropriation section.

Section 57-144, A.C.A. 1939, as amended, provides:

"57-144. State game and fish fund.--The commission shall on or before the last Tuesday of each month pay to the state treasurer, all the money received

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by it from licenses or from any other sources under this act, and the state treasurer shall deposit such money in a special fund to be known as the state game and fish protection fund, which is hereby set aside, appropriated and made available to the commission in carrying out the provisions of this act and such funds shall be used for no other purpose, provided however, that the expenditures of such funds shall be under the strict control of the budget laws of the state and no money shall be expended from such funds except: (a) as provided for by the state legislature specifying the amounts and purposes for which such funds may be expended; (b) to match federal grants for wildlife restoration; and (c) for emergency purposes not to exceed \$25,000.00 in any one fiscal year when authorized by the governor and state auditor." (Emphasis supplied)

Any confusion that may have resulted from the requirement that the Game and Fish Commission paid to the State the amount of \$6,000.00 for rent, could be due in part to the nature of the Game and Fish Protection Fund.

The Legislature at no time has stripped itself of control over the funds. The fact that the fund is a special fund is due solely to the fact that the Legislature so desired, and this does not deprive the Legislature of complete control over the funds. The Game and Fish Protection Fund could in no way be considered "property" of the Game and Fish Department.

This fact is forcefully brought out by the very language of the section creating the fund when it provides that the expenditures are made as provided by the Legislature specifying the amount and purpose.

Another approach that should clarify this situation is that the Legislature could at any time declare that those funds now paid into and constituting the Game and Fish Protection Fund be made part of the general fund. Then should they make an appropriation of funds to a department and require certain of those funds be paid back into the general fund in the nature of rent, there could be no question about the legality of the act.

Here, instead of taking the entire Game and Fish Protection Fund, they have only required that a certain portion of it be made a part of the general fund. If the Legislature has power to take the whole, they would certainly have the power to take a part. This, combined with the fact that the very creation of the Game and Fish Protection Fund gives the Legislature the power to dispose of it, leaves little doubt that the Game and Fish Commission is required to pay to the State \$6,000.00 for rent.

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We hope that the above has fully answered your questions in regard to this matter.

Yours very truly,

RODERIC M. JENNINGS
Assistant to the
Attorney General

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